

Foreign-Trade Zones Board, Commerce

§ 400.48

grantee, the Board may consider the costs incurred by those parties (using best estimates, as necessary). The Board will also give consideration to any extra costs incurred relative to non-zone operations, including return on investment and reasonable out-of-pocket expenses.

§ 400.46 Grantee liability.

(a) *Exemption from liability.* A grant of authority, *per se*, shall not be construed to make the zone grantee liable for violations by zone participants. The role of the zone grantee under the FTZ Act and the Board's regulations is to provide general management of the zone to ensure that the reasonable needs of the business community are served. It would not be in the public interest to discourage public entities from zone sponsorship because of concern about liability without fault.

(b) *Exception to exemption from liability.* A grantee could create liability for itself that otherwise would not exist if the grantee undertakes detailed operational oversight of or direction to zone participants. Examples of detailed operational oversight or direction include review of an operator's inventory-control or record-keeping systems, specifying requirements for such a system to be used by an operator, and review of CBP documentation related to an operator's zone receipts and shipments.

§ 400.47 Retail trade.

(a) *In general.* Retail trade is prohibited in activated areas of zones, except that 1) sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated area of a zone under a permit issued by the zone grantee and approved by the Board, and 2) no permits shall be necessary for sales involving domestic, duty-paid or duty-free food and non-alcoholic beverage products sold within the zone or subzone for consumption on premises by individuals working therein. The Executive Secretary shall determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause. Determinations on whether an activity constitutes retail

trade shall be based on precedent established through prior rulings by CBP, as appropriate. Such prior rulings shall remain effective unless a determination is issued to modify their effect (after a notice-and-comment process, as appropriate). Determinations made by the Executive Secretary pursuant to this section shall be made available to the public via the Board's Web site.

(b) *Procedure.* Requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the Executive Secretary, who is authorized to act for the Board in these cases, after consultation with CBP as necessary.

(c) *Criteria.* In evaluating requests under this section, the Executive Secretary and CBP shall consider factors that may include:

(1) Whether any public benefits would result from approval; and

(2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

§ 400.48 Zone-restricted merchandise.

(a) *In general.* Merchandise in zone-restricted status (19 CFR 146.44) may be entered into the customs territory of the United States only when the Board determines that the entry would be in the public interest. Such entries are subject to the customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c(a), 4th proviso).

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board shall consider:

(1) The intent of the parties;

(2) Why the merchandise cannot be exported;

(3) The public benefit involved in allowing entry of the merchandise; and

(4) The recommendation of CBP.

(c) *Procedure.* (1) A request for authority to enter "zone-restricted" merchandise into U.S. customs territory shall be made to the Executive Secretary in letter form by the zone grantee or by the operator responsible for the merchandise (with copy to the grantee), with supporting information and documentation.

§ 400.49

(2) The Executive Secretary shall investigate the request and prepare a report for the Board.

(3) The Executive Secretary may act for the Board under this section with respect to requests that involve merchandise valued at 500,000 dollars or less and that are accompanied by a letter of concurrence from CBP.

§ 400.49 Monitoring and reviews of zone operations and activity.

(a) *In general.* Ongoing zone operation(s) and activity may be reviewed by the Board or the Executive Secretary at any time to determine whether they are in the public interest and in compliance and conformity with the Act and regulations, as well as authority approved by the Board. Reviews involving production activity may also be conducted to determine whether there are changed circumstances that raise questions as to whether the activity is detrimental to the public interest, taking into account the factors enumerated in § 400.27. The Board may prescribe special monitoring requirements in its decisions when appropriate.

(b) *Conduct of reviews.* Reviews may be initiated by the Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary; or, they may be undertaken in response to requests from parties directly affected by the activity in question showing good cause based on the provision of information that is probative and substantial in addressing the matter in issue. After initiation of a review, any affected party shall provide in a timely manner any information requested as part of the conduct of the review. If a party fails to timely provide information requested as part of such a review, a presumption unfavorable to that party may be made.

(c) *Prohibition or restriction.* Upon review, if a finding is made that zone activity is no longer in the public interest (taking into account the factors enumerated in § 400.27 where production activity is involved), the Board or the Commerce Department's Assistant Secretary for Import Administration may prohibit or restrict the activity in question. Such prohibitions or restric-

15 CFR Ch IV (1–13 Edition)

tions may be put in place after a preliminary review (*e.g.*, prior to potential steps such as a public comment period) if circumstances warrant such action until further review can be completed. The procedures of § 400.34(a)(5)(iv)(A) shall be followed to notify the grantee of the affected zone and allow for a response prior to the final imposition of a prohibition or restriction. The appropriateness of a delayed effective date shall be considered.

Subpart F—Records, Reports, Notice, Hearings and Information

§ 400.51 Records and reports.

(a) *Records and forms.* Zone records and forms shall be prepared and maintained in accordance with the requirements of CBP and the Board, consistent with documents issued by the Board specific to the zone in question, and the zone grantee shall retain copies of applications/requests it submits to the Board in electronic or paper format.

(b) *Maps and drawings.* Zone grantees or operators, and CBP, shall keep current layout drawings of approved sites as described in § 400.21(d)(5), showing activated portions, and a file showing required activation approvals. The zone grantee shall furnish necessary maps to CBP.

(c) *Annual reports.* (1) Each zone grantee shall submit a complete and accurate annual report to the Board within 90 days after the end of the reporting period. Each zone operator shall submit a complete and accurate annual report to the zone grantee in a timeframe that will enable the grantee's timely submission of a complete and accurate annual report to the Board. A zone grantee may request an extension of the deadline for its report, as warranted. The Executive Secretary may authorize such extensions, with decisions on such authorizations taking into account both the circumstances presented and the importance of the Board submitting its annual report to Congress in a timely manner. Annual reports must be submitted in accordance with any instructions, guidelines, forms and related documents specifying place, manner